Supreme Court of the United States

OCTOBER A. D., 1950, TERM.

No. 180.

BROTHERHOOD OF RAILROAD TRAINMEN, A VOLUNTARY UNINCORPORATED ASSOCIATION, PETITIONER,

VS.

HAROLD H. TEMPLETON, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A CORPORATION, AND PANHANDLE AND SANTA FE RAILWAY COMPANY, A CORPORATION, RESPONDENTS.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

May it please the Court:

The petitioner, Brotherhood of Railroad Trainmen, respectfully petitions this Honorable Court for a rehearing of the order of this Court entered on the 9th day of October, 1950, denying petitioner's petition for a writ of certiorari, and moves the Court to vacate said order and to grant said writ of certiorari as prayed in the petition

for the same. As grounds for this petition, petitioner shows to the Court the following:

I.

Petitioner's petition for writ of certiorari was filed and docketed in this Court on July 5, 1950, as No. 180 of the October Term, 1950. On August 25, 1950, there was filed and it is now pending in the United States District Court for the Western District of Missouri, Western Division (the same District Court from which this suit emanates), a suit entitled:

> "SCOTT A. HESTER, MARION R. HOLLON, CHAUNCEY, L. STEWART, AND DEWEY R. BREWER, Plaintiffs,
>
> VS.
>
> BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, E. R. BOGGS, Vice-President, Brotherhood of Railroad Trainmen, c/o DeSoto Hotel, St. Louis, Missouri, ORAL B. MULLEN, General Chairman, Brotherhood of Railroad Trainmen, 1009 Baltimore, Kansas City, Missouri, DON M. SCHMITT, State Legislative Representative, 309 East 10th Street, Kansas City, Missouri, RALPH E. DELANEY, Local Chairman, Brotherhood of Railroad Trainmen, Marceline, Missouri, GEM CITY LODGE, No, 272 an unincorporated subordinate lodge of Brotherhood of Railroad Trainmen, Marceline, Missouri, Defendants."

A true copy of the complaint in said suit is marked Exhibit A and is set out in the appendix attached to this petition.*

---

*A similar suit pending in the same court was voluntarily dismissed without prejudice on August 25, 1950. *John C. Kelly v. Brotherhood of Railroad Trainmen, No. 6137.*

The action is one for damages wherein a recovery is sought of the defendants named, and, in particular, of your petitioner, Brotherhood of Railroad Trainmen, as a voluntary unincorporated association and railway labor union in the sum of $2,800,000.00, plus $57,500.00 per month from November 15, 1949, or at the rate of $690,000.00 per year from said date for actual damages, plus $5,000,000.00 for punitive damages, or $7,800,000.00 in the aggregate, plus said sum of $57,500.00 per month from November 15, 1949.

The action purports to be a class action brought by the named plaintiffs on behalf of themselves and all other Express Messenger employees of the Railway Express Agency, Incorporated, whom the complaint alleges were, prior to September 15, 1945, engaged in joint-service on the Santa Fe System and in the handling of Santa Fe baggage on Santa Fe trains, it being further alleged that such joint-service was discontinued by the Santa Fe on said date of September 15, 1945, and the work of handling Santa Fe baggage on Santa Fe trains given to employees of the Santa Fe holding seniority as Brakemen, which craft of employees are represented by your petitioner. The complaint alleges that the plaintiff class consists of approximately two hundred and seventy-five employees.

The purported class which the plaintiffs in the Hester suit claim to represent is the same class which Templeton, in the case at bar, claims to represent.

In calling to the attention of this Court the intervening circumstances of the filing of the Hester suit, your petitioner does not concede, either by inference or otherwise, that the opinion and judgment of the Court of Appeals, in the case at bar, affirming the District Court's final decree of injunction, is in any degree whatever decisive or controlling of any of the matters which are sought to be presented by the complaint in the Hester case. On

the contrary, your petitioner emphatically contends that the opinion and judgment of the Court of Appeals has no controlling effect or bearing whatever on the subject matter of the Hester suit.

The intervening circumstance of such a suit which is directed at the entire membership of your Petitioner does in the opinion of petitioner serve to recreate and emphasize the public importance and very substantial nature of the question as to whether, at any stage of a continuing dispute between the collective agent and the Carrier, there is such a limitation or restriction on the collective bargaining power and authority conferred by the Railway Labor Act as will nullify the collective procedure itself and collective agreements reached in pursuance of that procedure. In other words, may the collective bargaining power conferred by the Railway Labor Act to make a new agreement settling for the future a dispute concerning the coverage or meaning of a pre-existing collective agreement or to change the terms of an existing agreement (*Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U. S. 711, 739, 65 S. Ct. 1282) be abrogated or limited at any stage of the continuing dispute between the collective agent and the Carrier. In this case, your petitioner, as the collective bargaining representative of the employees of the Carrier holding seniority with the Carrier as Brakemen, claimed to the Carrier that such employees had the exclusive right, under their collective agreement (S. Fe's Exhibit 4 on file with this Court) to perform all of the Carrier's baggage work on its Eastern and Western Lines. The Carrier denied this claim, and the various disputes then arising perforce of this denial by the Carrier were processed to the National Railroad Adjustment Board and were by it, on April 20, 1942, decided in awards 6635 to 6639, inclusive, in favor of petitioner's claim. The Car-

rier, thereafter, not only refused to recognize the petitioner's claim, but refused to apply the awards. The dispute between the petitioner and the Carrier with respect to petitioner's claim continued to exist until the prospective and agreed settlement thereof was reached through the medium of the collective agreements, particularly the letter agreement of February 3, 1944 (B. of R. T.'s Exhibit 4), and paragraph 4(a) of the letter agreement of April 27, 1944 (B. of R. T.'s Exhibit 5), all made in pursuance of the collective bargaining power conferred by the Act, and made also within the purview of the earlier Whitney-Engel Memorandum (B. of R. T.'s Exhibit 1, R. 505, 506; see, also, pages 21, 22, 23 of petition for writ of certiorari), wherein it was agreed that the cases involving the aforementioned awards were *open questions* to be settled as such by conference and mutual agreement. As your petitioner points out in the jurisdictional statement and under questions presented (pp. 8, 10, petition for writ of certiorari), the issues thus presented under this question is not whether the awards of the National Railroad Adjustment Board are valid or invalid. It is the issue of whether, at any stage of the continuing dispute between the collective agent and the Carrier, there is any restriction or limitation upon the collective bargaining power and authority conferred by the Railway Labor Act, to settle, for the future, by collective agreement, rights between the parties to such agreements. Secs. 1a, 2 First, 2 Ninth, Railway Labor Act of 1934; 45 U. S. C., Sec. 151a, 152 First, 152 Ninth; *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515, 544, 545, 57 S. Ct. 592; *Elgin, J. & E. Ry. Co.* v. *Burley,* 325 U. S. 711, 723-729, 739, 65 S. Ct. 1282; *Slocum* v. *Delaware L. & W. R. Co.,* (No. 391, April 10, 1950) 70 S. Ct. 577, 579.

In this case a restriction sufficient to completely abrogate and nullify the collective bargaining power and au-

thority has been imposed, and it has been imposed solely by reason of the Court of Appeals holding that awards 6635 to 6639, inclusive, are void. In its opinion, the Court of Appeals held (R. 639):

> "The many other arguments and contentions very ably presented for B. of R. T. have been considered, but it does not appear that the trial court was clearly in error as to any of its findings and we hold that on those findings the court rightly concluded that the awards made by the Board were void as to the plaintiff's class of workmen for want of notice to them; *that the agreements subsequently made were merely to apply and implement the awards and did not evidence new or modified collective bargaining agreements between the railroads and the B. of R. T.* and did not destroy or terminate the rights of the plaintiff class as they existed prior to the awards. The trial court was not in error in issuing its injunction which was properly narrowed in scope and limited in its effect as stated in the injunctional order as follows:
>
> > 'It is further ordered, adjudged and decreed that the effect of this injunction is to place the parties in the same legal position toward each other which they occupied on September 15, 1945, and as though Awards 6635 to 6639, inclusive, of the First Division of the National Railroad Adjustment Board had not been rendered, *and as though no agreements had been entered into between defendant carriers and the Brotherhood of Railroad Trainmen implementing said Awards and enforcing the same.*'
> >
> > 'It is further ordered adjudged, and decreed that defendants are not restrained and enjoined from pursuing any remedies they may have under the Railway Labor Act' " (Emphasis ours).

Holding that the awards are void for want of notice to the plaintiffs' class of workmen is one thing, but holding

that the agreements subsequently were made simply to apply and implement the awards and did not evidence "new or modified collective bargaining agreements" between the railroad and the B. of R. T. is an entirely different thing. The fact that the letter agreement of February 3, 1944 (B. of R. T.'s Exhibit 4, R. 511-513), and the agreement embodied in paragraph 4(a) of the letter agreement of April 27, 1944 (B. of R. T.'s Exhibit 5), were not entered into until after much conference and negotiation over a long period of time, pursuant to the Whitney-Engel Memorandum (B. of R. T.'s Exhibit 1, R. 505, 506) and in the spirit outlined by the Engel letter of November 19, 1943 (B. of R. T., Exhibit 8, R. 527-530), has never been disputed in this case. Thus, all of the requirements of the Railway Labor Act for the collective bargaining procedures of conference, negotiation and agreement were met. As a matter of law, the February 3, 1944, agreement (B. of R. T.'s Exhibit 4, R. 511-513) on its face was not necessary if the sole object of the conferences and negotiations that were had was to apply and implement awards 6635 to 6639, inclusive. The decision of the awards recognized an interpretation and application of the basic contract (S. Fe.'s Exhibit 4 on file with this Court), and particularly, Article XXIII thereof, that was claimed by the B. of R. T. To give effect to the awards so far as this disputed principle was concerned, all the Carrier had to do was to simply assign the baggage work on its Eastern and Western Lines to the Brakemen and nothing more. In view of the Adjustment Board's ruling, there was no necessity for any independent agreement that would amend and read out of the basic contract any disputed language. Nevertheless, that is precisely what the Carrier and the Brotherhood of Railroad Trainmen did by entering into the agreement of February 3, 1944. That agreement, by its terms, expressly reads out of the basic contract the controversial language of Article XXIII. It settles, for the

future, the dispute between the parties and leaves no doubt but that under the agreed-upon interpretation and application thus made, the Brakemen have the exclusive right to perform the baggage work. In the same category of agreement, and as an amendment of Article I of the basic contract, is paragraph 4 (a) of the April 27, 1944, agreement (B. of R. T.'s Exhibit 5, R. 514-521) which creates a new classification and a schedule rate of pay for such classification. Every element of a collective bargaining agreement is present in these two agreements. For the Court of Appeals to hold that these two agreements "did not evidence new or modified collective bargaining agreements between the railroads and the B. of R. T." is to either do violence to a fundamental purpose of the Act (as declared in Sec. 1(a) of the Act), or it is to affirm the existence of a restriction and a limitation upon the collective bargaining power and authority conferred by the Railway Labor Act. Your petitioner is unable to find any language in the Railway Labor Act itself which so restricts the power and authority thus conferred and which limits the exercise of that power and authority to disputes other than disputes which have been previously decided by an Adjustment Board award which has subsequently been declared void for the reasons assigned by the Court of Appeals in this case. Neither has your petitioner been able to find any authority, nor has any been cited to this Court in either of the briefs filed on behalf of the respondents in opposition to the petition for writ of certiorari wherein a court has passed upon the question as to whether or not such a restriction or limitation does exist and insofar as your petitioner is informed, this question has never been passed upon by this Court.

In the opinion of your petitioner the question is of great public importance and assumes substantial pro-

portions, not only because the jobs of one hundred and fifty Brakemen employees of the Carrier, who have held those jobs since September 15, 1945, are in jeopardy here, but because the question vitally affects all employees of the railroad world who, in their relations with the Carrier employers, are subject to collective bargaining agreements made on their behalf by their representatives. In fact, the existence of such a limitation, or even the threat of the existence of such a limitation, places in jeopardy one of the fundamental purposes of the Railway Labor Act, namely, settlement of disputes of this character by agreement (Sec. 1a, Railway Labor Act of 1934, 45 U. S. C., Sec. 151a).

Furthermore, if the subject matter of the February 3, 1944, agreement is the subject of collective bargaining, which it is, then, the agreement itself is a valid collective agreement by which the Brakemen are assured the exclusive right to perform the Carrier's baggage work on its Eastern and Western Lines. The validity or invalidity of the awards as to the Express Messengers at the time they were rendered in 1942 is no issue in the case and no claim of the Express Messengers predicated on such awards exists. Suits like the Hester suit are nothing more than harassment of the petitioner. Under the terms of the February 3, 1944, agreement, the Carrier, on September 15, 1945, assigned its baggage work to the Brakemen. If the Carrier should now claim to petitioner that the February 3, 1944, agreement properly interpreted and applied does not amend and modify the basic contract so as to clearly give to the Brakemen such exclusive right, then that would be a dispute between the Carrier and the petitioner which either the Carrier or the petitioner, or both, could take to the Adjustment Board. Such a dispute would not be a subject for judicial determination

by a federal court. Yet, in this case, the Court of Appeals has exercised jurisdiction to interpret and apply that agreement and has construed it as being only an implementation of the earlier awards and not a "new or modified collective agreement." This ruling not only contravenes the ruling laid down by this Court in *Slocum* v. *Del. L. & W. R. Co.*, (No. 391, April 10, 1950) 70 S. Ct. 577, *Order of Ry. Conductors of America* v. *So. Ry. Co.*, (No. 438, April 10, 1950) 70 S. Ct. 585, and *Order of Ry. Conductors of America* v. *Pitney*, 326 U. S. 561, 66 S. Ct. 322, but it circumvents the collective bargaining procedures of the Railway Labor Act.

The Whitney-Engel Memorandum of October 26, 1943 (B. of R. T.'s Exhibit 1, R. 501-506), and the Engel letter of November 17, 1943 (B. of R. T.'s Exhibit 8, R. 527-530), plainly show that there was no compulsion on the Carrier to confer and negotiate with petitioner for these agreements and to reach an agreed settlement of the continuing dispute as to the coverage of the basic contract. The very nature of the obligation assumed by the Carrier thereunder; that is, the contractual recognition of the exclusive right in the Brakemen, necessarily implied a discontinuance of joint-service on the Carrier's Eastern and Western Lines, if a full performance by the Carrier of its agreement was to be made. (Admittedly, the Carrier had no collective agreement with the Express Messengers or their representative, the Clerks Union). If, thereafter, the Carrier was reluctant, as it now professes, to assign the baggage work exclusively to the Brakemen on September 15, 1945, it cannot claim that when it made the assignment with the consequence of terminating joint-service, it did not will to do so. The Carrier's will was expressed in its contractual obligation to petitioner previously made.

II.

It has been said by the Carrier, in opposition to the petition for writ of certiorari herein, that among other issues this case does not involve any issue as to the jurisdiction of federal courts to abrogate collective agreements, but, rather, that the fundamental issue here is confined to whether any award which the Adjustment Board has made is valid unless the Board has given the statutory notice. To thus state the issue in this case is to completely ignore the first and the very fundamental question presented in the petition for writ of certiorari and which has been commented on above in this petition. The Court of Appeals did declare the letter agreements to be void, and that is something considerably different than declaring the awards to be void.

The Carrier further states that this case is controlled by the decisions in *Nord* v. *Griffin*, (7 C. C. A.) 86 F. 2d 481, and *Hunter* v. *A., T. & S. F. Ry. Co.*, (7 C. C. A.) 171 F. 2d 594. Both of those cases turn on the sole question as to whether the awards of the National Railroad Adjustment Board were void as to the plaintiffs by reason of the Board's failure to give the plaintiffs statutory notice. Neither of those cases involve nor decide the question as to whether collective bargaining agreements are void because they cover a subject matter that was previously involved in what has subsequently been declared to be a void award of the Board. The question as to whether there exists such restriction or limitation on the collective bargaining power was not decided in either the *Nord* or *Hunter* cases, and so far as appears from the opinion in either case was not present.

III.

In connection with question 5 of the questions presented in the petition for certiorari (p. 12, petition for writ of certiorari), which is the question of whether the jurisdictional amount has been proved in this cause, petitioner inadvertently failed to cite or call attention to the case of *Thompson* v. *Gaskill*, 315 U. S. 442, 62 S. Ct. 673. Petitioner believes the *Gaskill* case is controlling of this question and desires to direct attention thereto at this time.

CONCLUSION.

Wherefore, for the reasons herein stated and for all of the reasons set forth in the petition for writ of certiorari and supporting argument and brief, petitioner prays the Court to grant a rehearing hereon, to vacate the order of October 9, 1950, and to grant the petition for writ of certiorari.

Respectfully submitted,

R. CARTER TUCKER,
JOHN MURPHY,
J. GORDON SIDDENS,
All of 831 Scarritt Building,
Kansas City 6, Missouri,
Counsel for Petitioner.

TUCKER, MURPHY, WILSON & SIDDENS,
831 Scarritt Building,
Kansas City 6, Missouri,
Of Counsel.

It is hereby certified that the above and foregoing petition for rehearing is presented in good faith and not

for delay. It is further certified that except for grounds II and III the grounds of the petition as stated in I are, in the opinion of counsel, of substantial and controlling effect and have been recreated and emphasized by the intervening circumstances of the filing of the Hester suit referred to in the petition.

R. CARTER TUCKER,
JOHN MURPHY,
J. GORDON SIDDENS,
Counsel for Petitioner.

APPENDIX.

Exhibit A.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

Civil Action No. 6555.

Scott A. Hester, Marion R. Hollon, Chauncey L. Stewart, and Dewey R. Brewer, Plaintiffs,

vs.

Brotherhood of Railroad Trainmen, a voluntary unincorporated association; E. B. Boggs, Vice-President, Brotherhood of Railroad Trainmen, % De Soto Hotel, St. Louis, Missouri; Oral B. Mullen, General Chairman, Brotherhood of Railroad Trainmen, 1009 Baltimore, Kansas City, Missouri; Don M. Schmitt, State Legislative Representative, Brotherhood of Railroad Trainmen, 309 East 10th Street, Kansas City, Missouri; Ralph E. Delaney, Local Chairman Brotherhood of Railroad Trainmen, Marceline, Missouri; Gem City Lodge, No. 272, An unincorporated subordinate lodge of Brotherhood of Railroad Trainmen, Marceline, Missouri, Defendants.

COMPLAINT.

1. Plaintiffs are citizens of the State of Kansas. Defendant, Brotherhood of Railroad Trainmen, is a voluntary unincorporated association and labor union, having its residence and principal place of business at Cleveland, Ohio. The defendants, E. B. Boggs, Oral D. Mullen, Don M.

Schmitt and Ralph E. Delaney are citizens of the State of Missouri. Defendant, Gem City Lodge, No. 272, is a voluntary unincorporated association and subordinate lodge of the Brotherhood of Railroad Trainmen having its residence and principal place of business at Marceline, Missouri.

2. The action arises under the Fifth Amendment to the Constitution of the United States, the Railway Labor Act enacted May 20, 1926, Chapter 347, 44 Stat. 577; as amended June 7, 1934, Chapter 426, 48 Stat. 926; June 21, 1934, Chapter 691, 48 Stat. 1185; June 25, 1936, Chapter 804, 49 Stat. 1921; and August 13, 1940, Chapter 664, Sections 2 and 3, 54 Stat. 785, 786; Title 45, U. S. C. A., 151 *et seq.*, as hereinafter more fully appears; The Labor Management Relations Act, 1947, Sub Chapter IV (c), Title 29, U. S. C. A. 141; Title 28, U. S. C. A. 1337; the Railroad Retirement Act of 1937; Title 28, U. S. C. A. 1337; The Railroad Retirement Act of 1935, August 29, 1935, Chapter 812, 49 Stat. 973; as amended June 24, 1937, Chapter 382, 50 Stat. 313; October 8, 1940, Chapter 757, 54 Stat. 1014; April 8, 1942, Chapter 227, 56 Stat. 208; July 31, 1946, Chapter 709, 60 Stat. 743; June 23, 1948, Chapter 608, 62 Stat. 577 and October 15, 1949, Chapter 695, 63 Stat. 880, Title 45, U. S. C. A. 215 *et seq.* The matter in controversy exceeds exclusive of interest and costs, the sum of three thousand dollars ($3,000.00).

3. Pursuant to Section 2, Third, of the Railway Labor Act of 1926, Title 45, U. S. C. A., 152, Third, the defendant Brotherhood of Railroad Trainmen is the statutory collective bargaining representative for all brakemen and train-baggagemen employed on the property of the Atchison, Topeka and Santa Fe Railway System, irrespective of whether or not such employees are members of said Brotherhood labor union. Said labor union has a nation wide membership numbering over 100,000 and it is impossible

and impractical for plaintiffs to join its many members as defendants herein, but the said Brotherhood is named defendant herein as well as class representative of its entire membership. Said Brotherhood operates through subordinate lodges, chairmen and other officers, agents and representatives and the following named defendants joined herein are the duly authorized officers and agents of the said defendant Brotherhood who are engaged in representing and acting for employee members of the said Brotherhood in the State of Missouri and elsewhere on the Santa Fe System. All such defendants are engaged in the regular business of the Brotherhood of Railroad Trainmen acting in its statutory capacity of collective bargaining representative for brakemen and baggagemen, on the Santa Fe System.

4. E. B. Boggs, Vice-President of the Brotherhood of Railroad Trainmen, together with Oral B. Mullen, General Chairman of the General Grievance Committee of said Brotherhood on the property of the Atchison, Topeka and Santa Fe Railway Company, Eastern and Western Lines, are the duly authorized representatives for said unincorporated labor organization, in connection with the dispute existing between plaintiffs and the class of train baggagemen they represent and brakemen members of the Brotherhood of Railroad Trainmen on the property of the Atchison, Topeka and Santa Fe Railway Company, Eastern and Western Lines, involving the brakemen's assertion of a right or claim of right to train-baggage work formerly done by plaintiffs and their class, and as the said Brotherhood's duly authorized officers and agents engaged in representing and acting for employee members of said labor union in Missouri and elsewhere, they are named as defendants representatives of said organization and its entire membership for purposes of this action.

5. Don M. Schmitt, Legislative Representative of said Brotherhood of Railroad Trainmen, is one of the highest ranking members of said national organization and labor union, serving it in an official capacity in the State of Missouri and as its duly authorized agent engaged in representing and acting for its employee members. Said unincorporated labor organization and its individual lodges are united under a common constitution and by-laws regulating all subordinate lodges, officials, and members and have a common treasury derived from membership dues and other sources, and the said Don M. Schmitt is a duly authorized representative for and an integral part of said unincorporated labor organization in connection with its avowed policy and practice of discrimination against the employment rights of plaintiffs and the class of trainbaggagemen they represent, and in behalf of brakeman, members of said labor union, to the end that plaintiffs and their class, through and due solely to said organization's discriminatory acts in clear violation of its statutory duty aforesaid, have been unjustly and illegally deprived of their employment and other property rights without due process of law, and therefore, the said Don M. Schmitt is named as defendant representative of said organization and its entire membership for the purpose of this action.

6. Ralph E. Delaney is a member of the Brotherhood of Railroad Trainmen and is Local Chairman of Gem City Lodge, No. 272, an unincorporated subordinate lodge of the said Brotherhood with residence and headquarters at Marceline, Missouri, and as the said Brotherhood's duly authorized agent engaged in representing and acting for its employee members he is named as defendant representative of the Brotherhood of Railroad Trainmen and of all of the subordinate lodges and of all members of the said Brotherhood.

7. Gem City Lodge, No. 272, an unincorporated subordinate lodge of the Brotherhood of Railroad Trainmen and its duly authorized representative acting for employee members and whose membership is drawn partly from brakemen employed on the property of the Atchison, Topeka and Santa Fe System is named as defendant representative of Brotherhood of Railroad Trainmen, the entire Brotherhood membership and all subordinate lodges of the said Brotherhood.

8. The Atchison, Topeka and Santa Fe Railway Company, a corporation, operates a railroad between Chicago, Illinois, and certain points on the Pacific Coast in California. The Panhandle and Santa Fe Railway Company, a corporation, operates the part of said railroad between Chicago and said California points that is located in Texas. Said railroad operation has been divided by said railroads into three lines. That part between Chicago, Illinois, and Newton, Kansas, or Wellington, Kansas, is called the Eastern Lines. That part between Newton, Kansas, or Wellington, Kansas, and Albuquerque, New Mexico, or Belen, New Mexico, is called the Western Lines. That part between Albuquerque, New Mexico, or Belen, New Mexico, and Los Angeles and other California points is called the Coast Lines. All of such railroad operations have connecting lines, handle through service, and are termed the Santa Fe system.

9. Plaintiffs bring this suit as a class action in behalf of themselves and all express messenger-train baggagemen similarly situated who have been and are being deprived of their such property rights and employment rights as train baggagemen by reason of the illegal, willful and malicious claims, conspiracies, contentions, threats and discriminatory acts of the Brotherhood of Railroad Trainmen, its officers, agents and representatives. The plain-

tiffs' class consists of approximately two hundred seventy five (275) members who are so numerous and are so widely scattered as to residence in various states of the union as to make it impractical to bring them before the Court. There are common questions of law and fact affecting the rights of the parties constituting the class and common relief is sought.

10. For many years, beginning sometime prior to April 1, 1892, the Railway Express Agency, Incorporated, or its predecessors, and the railroads comprising The Santa Fe System have jointly employed messenger-baggagemen. These messenger-baggagemen, including plaintiffs and the class they represent performed services both for the said Railway Express Agency, Incorporated, or its predecessors and for the said railroads. For said Railway Express Agency, Incorporated, said messenger-baggagemen, including plaintiffs handled express; for said railroads they handled baggage, United States mail, railroad company mail, and other items. All such services are performed in baggage cars owned and operated by the railroad. Express is the regular business of the Railway Express Agency, Incorporated. Baggage, United States mail and the handling of various other items in baggage cars are a part of the regular business of the railroads. The work of said messenger-baggagemen, including plaintiffs and the class they represent, is termed joint service. A train baggageman in joint service is not charged with any duties concerning the operation of the train and is under the direct and exclusive supervision and control of the railroad baggage department. Brakemen handling baggage continue to acquire seniority as brakemen only, there being no bargaining agreement securing seniority for train-baggagemen as such, and while they receive instructions from the Baggage Department they are under

the supervision and control of the Division Superintendents of the railroads.

11. Said messenger-baggagemen including plaintiffs were paid by said Railway Express Agency, Incorporated, acting as principal with respect to such express business, and by said Railway Express Agency, Incorporated, acting as agent for said railroads with respect to such baggage and mail business. Such compensation was physically delivered to said messenger-baggagemen, including plaintiffs, by said Railway Express Agency, Incorporated, and said Santa Fe railroads reimbursed said Railway Express Agency, Incorporated, for their respective parts of such compensation which usually amounted to not less than fifty per cent thereof. The Santa Fe also granted joint servicemen pass privileges in the manner provided for Santa Fe road employees.

12. In connection with such employment, said messenger-baggagemen, including plaintiffs, were and are entitled to the benefits provided for employees under the Railroad Retirement Act of 1937, U. S. C. A., Title 45, Section 228a to 228r, inclusive. While plaintiffs and their class were in joint service the said railroads paid to the Railway Express Agency, Incorporated, one-half of the railroad retirement tax paid by the Express Agency into the Railroad Retirement Fund for plaintiffs and their class. In connection therewith, the Santa Fe also reimbursed the Express Agency for fifty per cent (50%) of the messenger-baggagemen's vacation pay allowance.

13. While employed in joint service, plaintiffs and the class they here represent received differential pay for the handling of baggage and mail in addition to their base or bulletin pay. This differential pay averaged $15.00 or $20.00 per man per month.

14. With respect to such express business, said Railway Express Agency, Incorporated, retained the right to direct and control, all phases of the work of said messenger-baggagemen including plaintiffs.

15. With respect to such baggage and mail business the said railroads retained the right to direct and control and did direct and control all phases of the work of said messenger-baggagemen, including plaintiffs.

16. Plaintiffs were so employed by said Railway Express Agency, Incorporated, and The Atchison, Topeka and Santa Fe Railway Company and The Panhandle and Santa Fe Railway Company on said railroad carrier's Eastern and Western Lines, in joint service for many years continuously until September 15, 1945, when they were deprived of such employment under circumstances hereinafter stated and alleged.

17. At the discontinuation of joint service aforesaid on September 15, 1945, plaintiffs were employed as messenger-baggagemen on Santa Fe Trains. The reduction of messenger jobs caused by this change giving all train-baggage jobs to brakemen made it impossible for many former joint servicemen to hold a regular job, and they were compelled to work off the extra board, or accept any Express Agency employment their seniority could protect.

18. For years prior to the passage of the Railway Labor Act and at all times since, the Brotherhood of Railroad Trainmen, through its agents, representatives and members, has purported and professed itself to be the exclusive bargaining representative of the entire crafts of brakemen and train baggagemen, employed on the property of the Atchison, Topeka and Santa Fe Railway Company, a corporation, Eastern, Western and Coast Lines, the Panhandle and Santa Fe Railway Company, a corpora-

tion, and the entire Santa Fe System, being duly designated as such under and pursuant to Section 2, Third, of the Railway Labor Act (Title 45, Section 152, Third, U. S. C. A.). During all of that time the said Brotherhood has consistently and continuously failed and refused to bargain collectively for the craft of train baggagemen. For more than fifty (50) years the said Brotherhood has been hostile to joint servicemen and has persistently tried to drive them out of their train-baggageman employment and demanded that Santa Fe replace joint-service train-baggagemen with brakemen to increase employment of brakemen members of the said Brotherhood. Ever since the passage of the Railway Labor Act the said Brotherhood has perverted its position and has used the power available to it under said Act to cripple and destroy the train-baggagemen rights of such joint servicemen, including plaintiff and the class he represents, solely because they were not and are not brakemen and members of the Brotherhood of Railroad Trainmen.

19. In the year 1892 the defendant Brotherhood of Railroad Trainmen and the Atchison, Topeka and Santa Fe Railway Company first entered into a contract or collective bargaining agreement and at all times since there has been in effect such a contract or agreement denominated "Schedule of Rates, Rules and Regulations for Trainmen." All of the collective bargaining agreements negotiated by and between the Brotherhood of Railroad Trainmen and The Atchison, Topeka and Santa Fe Railway Company, a corporation, and the Panhandle and Santa Fe Railway Company, a corporation, respectively denominated "Schedule of Rates, Rules and Regulations for Trainmen" specifically provided the manner whereby baggage runs "not controlled by joint service" should be filled from the ranks of brakemen. All such agreements exclude their applica-

tion to baggagemen. A copy of such agreement effective December 27, 1943, is marked "Exhibit A," attached hereto and made a part hereof, the same as though set out in full in this place.

20. By contract and agreements with the Railway Express Agency, Incorporated, and its predecessors, said railroad carriers for over fifty years on their Eastern and Western Lines, and until September 15, 1945, filled their train baggageman rosters for runs controlled by joint service from the existing express messenger rosters. Joint service continues uninterrupted on the carriers Coast Lines. Under such agreements and by many years custom the railroads paid at least half of the joint service messenger-baggageman's salary and wages. Baggage runs not controlled by joint service on the Santa Fe Eastern and Western Lines were filled from the roster of eligible and competent brakemen in accordance with the provisions of the brakemen's bargaining agreement. Since September 15, 1945, all baggage runs on the said Eastern and Western Lines are filled from the roster of brakemen who, nevertheless continue to acquire seniority as brakemen only, and not as baggagemen, there being no bargaining agreement between the Santa Fe and the Brotherhood of Railroad Trainmen providing for baggageman seniority.

21. On or about the 28th day of February, 1935, the First Division of the National Railroad Adjustment Board, in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company*" and numbered docket number 324, entered its award number 143 whereby it decided that the work of handling baggage for Santa Fe Eastern and Western Lines upon certain trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen, and not to anyone else.

22. On or about the 20th day of April, 1942, the First Division of the National Railroad Adjustment Board, in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Eastern and Western Lines,*" and numbered docket number 7684, entered its award number 6635 whereby it decided that the work of handling baggage for The Atchison, Topeka and Santa Fe Railway Company upon certain trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen, and not to said messenger-baggagemen, including plaintiffs.

23. On or about the 20th day of April, 1942, the First Division of the National Railroad Adjustment Board, in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Western Lines,*" and numbered docket number 10405, entered its award number 6636 whereby it decided that the work of handling baggage for the Santa Fe on any and all trains on the Eastern and Western Lines belongs to brakemen who are members of the Brotherhood of Railroad Trainmen and not to said messenger-baggagemen including plaintiff.

24. On or about the 20th day of April, 1942, The First Division of the National Railroad Adjustment Board in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Eastern and Western Lines,*" and numbered docket number 7685, entered its award number 6637 whereby it decided that the work of handling baggage for the Santa Fe on certain trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen, and not to anyone else.

25. On or about the 20th day of April, 1942, The First Division of the National Railroad Adjustment Board in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Eastern and Western Lines,*" and numbered docket number 7686, entered its award numbered 6638 whereby it decided that the work of handling baggage for the Santa Fe upon certain trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen and not to anyone else.

26. On or about the 20th day of April, 1942, the First Division of the National Railroad Adjustment Board, in a grievance proceeding instituted by the Brotherhood entitled "*Brotherhood of Railroad Trainmen* v. *The Atchison, Topeka and Santa Fe Railway Company—Eastern and Western Lines,*" and numbered docket number 7685, entered its award number 6639 whereby it decided that the work of handling baggage upon certain Santa Fe trains belonged to brakemen who are members of the Brotherhood of Railroad Trainmen and not to anyone else.

27. Each of the said grievances and claims made by the Brotherhood of Railroad Trainmen, its officers and agents, are discriminatory, based on false premises, made without notice to plaintiffs or the class they represent and a scheme to promote the interests of brakemen using their bargaining representative power available under and provided for by the Railway Labor Act to deprive plaintiff and other such train-baggagemen of their employment rights and benefits. Such awards of the Adjustment Board based on said proceedings are illegal, void and unconstitutional, in this that messenger-baggagemen, including plaintiffs, were not notified or given any opportunity to be heard, although their employment rights

were directly involved and of which they were deprived by the awards, without due process of law in violation of the Railway Labor Act and the Fifth Amendment to the Constitution of the United States.

28. Enforcing and giving legal effect to said illegal and void awards, at the insistence and demands of the Brotherhood of Railroad Trainmen, its agents, members and officers, the Santa Fe agreed to and did on September 15, 1945, discharge said messenger-baggagemen, including plaintiffs, on its Eastern and Western Lines, terminating that part of their joint employment which was the handling of baggage, mail and other railroad business, whereby they were and are being unjustly deprived of their said property rights. Since September 15, 1945, the train baggage has been and is being handled by brakemen exclusively on the Santa Fe Eastern and Western Lines.

29. The discontinuance and termination of the employment of joint-servicemen in the employ of the Santa Fe was induced, procured and brought about by the Brotherhood of Railroad Trainmen, its officers, members and representatives by their filing before the Railroad Adjustment Board the claims in behalf of brakemen and against joint service train baggagemen to all train-baggage work, which resulted in the promulgation of the awards aforesaid, and agreements implementing them made with the Santa Fe at the insistence and demand of the Brotherhood of Railroad Trainmen that said awards be put into effect and complied with. The Santa Fe did not will to terminate the employment by it of messenger-baggagemen on its Eastern and Western Lines, independent of the awards of the National Railroad Adjustment Board, First Division, and the insistence and demand of the Brotherhood and its members that said awards be com-

plied with, and put into effect. The Santa Fe does not now will to discontinue or terminate messenger-baggagemen now in its employ upon the Coast Lines of its System, but the said Brotherhood is continuing to assert its claims for brakemen to all train baggage work, thereby discriminating against the train baggagemen now employed and disregarding its statutory duty as collective bargaining representatives for train baggagemen.

30. Plaintiffs state that their jobs and those of the members of their class and their right to remain employed by the railroads free from interference by others is their most precious property right and that the officers, chairmen, agents, and other representatives of the Brotherhood and its entire membership have conspired and plotted together to combine and use their collective economic power to accomplish their unlawful purpose of interfering with the inherent rights of plaintiffs and the class they here represent, to earn a livelihood as employees in the train service of such railroads. The Brotherhood of Railroad Trainmen through its said officers, agents and representatives acting in behalf of brakemen have continuously applied economic duress on the railroads comprising the Santa Fe System to coerce them into destroying and reducing the means of a livelihood of plaintiff and others similarly situated by discharge of all or most of them. Members of the class plaintiffs represent have devoted many years of faithful service to the interest of the Santa Fe and have developed special skills as train-baggagemen and have earned valuable retirement and other rights which they deem worthy of preservation.

31. The Brotherhood of Railroad Trainmen in absolute disregard of its statutory duty to protect the rights of all members of a craft or class which it should represent, or of public policy, has caused the plaintiffs and

others similarly situated tremendous loss, and as a result of past action, discrimination and misconduct of the Brotherhood of Railroad Trainmen, its members, representatives, officials and agents, train baggagemen in joint service have not been protected in their right to derive pay equal to that of brakemen performing the same train baggage work, or on seniority scheduled which the Brotherhood of Railroad Trainmen as bargaining representative for both brakemen and train or road baggagemen should have negotiated with the railroad carriers, and that as a result of the said Brotherhood's discriminatory failure and refusal so to act, train baggagemen in joint service have earned, on the average, $100.00 per month less than brakemen in exclusive baggage service doing the same work.

32. As a result of the discontinuance of joint service aforesaid and termination of the train baggageman employment of messenger-baggagemen, fifty-four (54) messenger-baggagemen in the Southwest Kansas Division of the Railway Express Agency, Incorporated, employees of the Santa Fe, and members of the class whom plaintiffs represent, lost their jobs, not only with the Santa Fe but also with the Express Agency. Other joint servicemen on other parts of the Santa Fe Eastern and Western Lines also lost their jobs entirely. Two hundred fifty (250) messenger-baggagemen were discontinued in joint service on the Santa Fe as a result of said awards, and the implementation thereof at the insistence of the Brotherhood. Such action resulted in a general reduction of the hours of employment and wages of plaintiffs and all such messenger-baggagemen formerly in joint service on the Santa Fe Eastern and Western Lines and the loss of other advantages previously enjoyed by said joint-servicemen by reason of their employment with the Santa Fe. The employment status of express messengers in both exclusive messenger service and joint messenger-baggage service on

other railroads was also disturbed. Due to the seniority rules some such road or train messenger-baggagemen were forced out of employment. As a result of brakemen taking over the train baggage work plaintiffs and all members of their class similarly situated have on the average been and are being deprived of $100.00 earnings and wages per month. Thereby their annuity potential under the Railroad Retirement Act of 1937, 45 U. S. C. A. Chapter 9, Section 228 a *et seq.* has been prejudiced.

33. In connection with implementing and settling the claims of the brakemen embodied in the aforesaid awards, the Santa Fe was required to pay and did pay and distribute to the brakemen the large penalties assessed by the respective awards for various numbers of years retroactive from April 30, 1944, the exact amounts of which are unknown to plaintiffs. Such penalties were based on the Brotherhood's discriminatory claims to the National Railroad Adjustment Board in behalf of brakemen that plaintiffs and other train baggagemen in joint service had displaced brakemen from baggage service, although until after September 15, 1945, when joint service was discontinued on the Eastern and Western Santa Fe Lines very few brakemen had ever worked in train baggage service on the Santa Fe and none had any seniority as train baggagemen.

34. The continuous misfeasance and interference with plaintiffs' job rights by the Brotherhood of Railroad Trainmen through its members, officers, chairmen and other representatives in behalf of the entire membership of their labor union and especially brakemen has been wilful and malicious for which they should be held liable for actual damages. Punitive damages should further be assessed against said defendants and the entire membership of said labor union because of the unlawful means

they used to carry out an unlawful object and purpose sufficiently large to have a deterring effect upon them. Considering the wealth of the Brotherhood of Railroad Trainmen and its subordinate lodges and the scope of their conspiracy and deliberate discrimination against plaintiffs and others similarly situated to damage and destroy their employment rights, it is believed that the sum of five million dollars should be assessed as punitive damages against the defendants.

35. By reasons of the aforesaid discriminatory acts of the Brotherhood of Railroad Trainmen through its officers and representatives and its interference with the employment rights, benefits and privileges of plaintiffs and the members of the class they represent the plaintiffs and their class have sustained actual damages in the amount of Two Million Eight Hundred Twenty Thousand Dollars ($2,820,000.00) to November 15, 1949, and thereafter said actual loss of wages and damages is continuing and increasing at the rate of in excess of Fifty Seven Thousand Five Hundred Dollars ($57,500.00) per month.

36. An actual controversy exists between plaintiffs and their class and defendants with respect to all of the aforesaid matters.

Wherefore, the premises considered, in behalf of all members of the class of joint messenger-baggagemen similarly deprived of their employment rights, privileges and benefits by the discriminatory acts of the Brotherhood of Railroad Trainmen, its officers, representatives and members, plaintiffs pray judgment against the defendants and the entire membership of the Brotherhood of Railroad Trainmen for actual damages in the amount of Two Million Eight Hundred Twenty Thousand Dollars ($2,820,000.00) to November 15, 1949, said actual loss of

wages and damages continuing to accrue from said date at the rate of Fifty Seven Thousand Five Hundred Dollars ($57,500.00) per month, and punitive damages in the amount of Five Million Dollars ($5,000,000.00) and for their costs herein incurred and expended.

JAMES P. AYLWARD,
GEORGE V. AYLWARD,
1215 Commerce Building,
Kansas City 6, Missouri,
VI 6064,
Attorneys for Plaintiff.

THOMAS P. DOWNS,
501 Columbia Bank Building,
Kansas City 6, Missouri,
HA 0710,
Attorney for Plaintiff.